



STATE OF INDIANA

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December 14, 2012

Ms. Angela C. Erickson
901 N. Glebe Rd., Suite 900
Arlington, Virginia 22203

Re: Formal Complaint 12-FC-334; Alleged Violation of the Access to Public Records Act by the City of Gary's Redevelopment Commission

Dear Ms. Erickson:

This advisory opinion is in response to your formal complaint alleging the City of Gary's Redevelopment Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Commission on November 16, 2012. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Commission on July 16, 2012. After not receiving a response, you faxed the request again on July 26, 2012. On August 13, 2012, you spoke with Ms. Valda Stanton with the Commission, who directed you to another employee. After still not receiving any direct response to your request, you were informed to contact Ms. Jeraldine Williams. On October 3, 2012, you emailed your written request again to Ms. Williams. Ms. Williams informed you that she would be sending your request to the Commission's attorney for approval, a step that you had previously been informed by Ms. Stanton had already occurred a month before. Since that time, you have continued to email Ms. Williams regarding the status of your request and have received no response. You last spoke to Ms. Williams on October 19, 2012, at which time she informed you that she was waiting on one additional record in order to complete the disclosure.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. The Commission is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the

Commission's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Without the benefit of a response from the Commission to your formal complaint, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Accordingly, it is my opinion that the Commission violated section 9(b) of the APRA by failing to respond to your written request in writing within seven (7) days of receipt. Further, it is my opinion that the Commission violated section 3(b) of the

APRA by failing to provide all records that were responsive to your request within a reasonable period of time.

CONCLUSION

For the foregoing reasons, it is my opinion that the Commission violated section 9(b) of the APRA by failing to respond to your written request for records in writing within seven (7) days of receipt. Further, it is my opinion that the Commission violated section 3(b) of the APRA by failing to provide all records that were responsive to your request within a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Valda Staton, Jeraldine Williams.